IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2846 OF 2005

Saurin T. Parikh, Proprietor of
Shah Investment. .. .. Petitioner
v/s.
Stock Exchange & anr. .. Respondents

Mr.Shyam Divan, Sr.Counsel with Mr.Prashant Bhagwati and Mr.Ravi Goenka i/by Goenka Law Associates for petitioner.

Mr.P.N.Mody with Mr.Sagar Divekar i/by Wadia Ghandy for res.Nos.1 & 2.

CORAM : H.L. GOKHALE &
ABHAY S. OKA, JJ.

DATED : 27th February 2006

ORAL ORDER : (Per H.L. Gokhale, J.)

1. Heard Mr.Divan in support of this Petition. Mr.Mody appears for the Bombay Stock Exchange, which is respondent No.1 as well as Investor Protection Fund, which is respondent No.2. The Petition seeks an order to set aside the order dated 25th May 2005 passed by the 1st respondent and seeks an order directing the Stock Exchange to give further opportunity to the petitioner.

2. The facts leading to this Petition are as follows:-

. The petitioner is claiming the amounts on

account of one Kantilal Mangaldas Securities (P) Ltd. becoming a defaulter. The petitioner obtained an Award before the Arbitrators of the Stock Exchange wherein this defaulter conceded the claim. The petitioner's case is that therefore the petitioner is entitled to the amounts held due and they be released from the Investor Protection Fund. The Stock Exchange declined to accept this request by its letter dated 22nd February 2005 on the ground that the client code mentioned on the contract notes issued by the default member was not matching with the trade files of the Exchange. An Appeal was preferred and it came to be rejected by the impugned order dated 25th May 2005. The order states that the written submissions made by the petitioner were considered and the Committee has upheld the decision.

3. Mr.Divan, learned Counsel appearing for the petitioner, submits that in view of the guidelines framed by SEBI, the amount had to be released from the Investor Protection Fund. He further submits that SEBI has issued a circular dated 28th October 2004 under the power available under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and a mechanism is created under these guildelines. A claim is

permitted to be filed under these guidelines and since the claim was filed, the Stock Exchange had to honour the Award given by the Arbitrators.

4. Mr.Mody, learned Counsel appearing for the Stock Exchange, on the other hand, pointed out that the claims are to be entertained in accordance with the bye-laws, rules or regulations of the Stock Exchange. That is provided under Clause 7 of the SEBI Regulations itself. He has drawn our attention to the rules of the Trust governing this Investor Protection Fund. Under Rule 7(E) of these Rules, it is provided that the Trustees shall have an absolute discretion as regards the mode and method of assessing the nature of claims and under Rule 8 it is specifically provided that the fund shall be under no legal obligation to collect the debts of a default member and/or to make payments from the fund. That apart in para-3 of the affidavit-in-reply, it has been specifically stated that in the case of default of Kantilal Mangaldas Securities Private Limited with whom the petitioner was affiliated as a sub-broker, it was noticed that the claims of almost Rs.2 Crores were lodged with the said Trust and most of the claims lodged were by or through sub-brokers such as the

petitioner and the claims were fully conceded and accepted by the said defendant broker.

5. Mr.Mody has pointed out that the release of the fund from the Investor Protection Fund was discretionary and it was essentially meant for a benefit of the small investors. In the instant case, his submission is that the claim was essentially collusive and, therefore, on facts also the SEBI was entitled to reject it.

6. We quite see the force in the submission of Mr.Mody. That apart, if the petitioner wants to execute the Award given by the Arbitrators, the remedy under the Arbitration and Conciliation Act, 1996 is available to the petitioner. We do not consider the SEBI guidelines as creating a mandatory requirement for the Investor Protection Fund. We have taken a similar view in one of the earlier matters which came before this Court in **Writ Petition No.2649 of 2004 in the case of Ms.Pragna Desai vs. The National Stock Exchange of India Ltd.** by order dated 12th January 2006.

7. Petition is dismissed.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)